

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 376

Introduced by Senator Correa

(Principal coauthors: Assembly Members Alejo, Mullin, and ~~V. Manuel~~
Pérez V. Manuel Pérez)

(Coauthors: Senators Hill and Wyland)

February 20, 2013

An act to add Section 6377.4 to, and to add and repeal Sections 17053.91 and 23649.1 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 376, as amended, Correa. Sales and use taxes: personal and corporate income tax: manufacturers' credit and exemption.

(1) Existing laws impose state sales and use taxes on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, at the cumulative state rate of 6.5%, and provides various exemptions from those taxes.

This bill would exempt from those state taxes, on and after January 1, 2017, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased for use by a qualified person for use primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property, as specified, or for use primarily in research and development, as specified, or to maintain, repair, measure, or test that property. The bill would also exempt from those taxes the gross receipts from the sale of, and the

storage, use, or other consumption of, tangible personal property purchased for use by a contractor, as specified, for a qualified person. The bill would require the purchaser to furnish the retailer with an exemption certificate, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes and transactions and use taxes.

(2) The Personal Income Tax Law and the Corporation Tax Law authorizes various credits against the taxes imposed by those laws.

This bill would allow a credit in *an* amount equal to a specified portion of the amount of sales tax reimbursement paid to a retailer or use tax paid on a purchase of tangible personal property with respect to taxes paid on transactions occurring on and after January 1, 2014, and before January 1, 2017, that are imposed under sales and use tax laws for the sale of, or the storage, use, or other consumption in this state of, qualified tangible personal property purchased for use by a qualified person for use primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property, as specified, or for use primarily in research and development, as specified, or to maintain, repair, measure, or test that property. The credit would be applied in equal amounts over 3 successive taxable years beginning with the first taxable year beginning on or after January 1, 2017.

(3) This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6377.4 is added to the Revenue and
2 Taxation Code, to read:
3 6377.4. (a) On and after January 1, 2017, there are exempted
4 from the taxes imposed by this part the gross receipts from the sale
5 of, and the storage, use, or other consumption in this state of, any
6 of the following:

1 (1) Qualified tangible personal property purchased for use by
2 a qualified person to be used primarily in any stage of the
3 manufacturing, processing, refining, fabricating, or recycling of
4 property, beginning at the point any raw materials are received by
5 the qualified person and introduced into the process and ending at
6 the point at which the manufacturing, processing, refining,
7 fabricating, or recycling has altered property to its completed form,
8 including packaging, if required.

9 (2) Qualified tangible personal property purchased for use by
10 a qualified person to be used primarily in research and
11 development.

12 (3) Qualified tangible personal property purchased for use by
13 a qualified person to be used primarily to maintain, repair, measure,
14 or test any qualified tangible personal property described in
15 paragraph (1) or (2).

16 (4) Qualified tangible personal property purchased for use by
17 a contractor purchasing that property for use in the performance
18 of a construction contract for the qualified person, who will use
19 that property as an integral part of the manufacturing, processing,
20 refining, fabricating, or recycling process, or as a research or
21 storage facility for use in connection with those processes.

22 (b) For purposes of this section:

23 (1) “Fabricating” means to make, build, create, produce, or
24 assemble components or property to work in a new or different
25 manner.

26 (2) “Manufacturing” means the activity of converting or
27 conditioning tangible personal property by changing the form,
28 composition, quality, or character of the property for ultimate sale
29 at retail or use in the manufacturing of a product to be ultimately
30 sold at retail. Manufacturing includes any improvements to tangible
31 personal property that result in a greater service life or greater
32 functionality than that of the original property.

33 (3) “Primarily” means 50 percent or more of the time.

34 (4) “Process” means the period beginning at the point at which
35 any raw materials are received by the qualified person and
36 introduced into the manufacturing, processing, refining, fabricating,
37 or recycling activity of the qualified person and ending at the point
38 at which the manufacturing, processing, refining, fabricating, or
39 recycling activity of the qualified person has altered tangible
40 personal property to its completed form, including packaging, if

1 required. Raw materials shall be considered to have been
2 introduced into the process when the raw materials are stored on
3 the same premises where the qualified person's manufacturing,
4 processing, refining, fabricating, or recycling activity is conducted.
5 Raw materials that are stored on premises other than where the
6 qualified person's manufacturing, processing, refining, fabricating,
7 or recycling activity is conducted, shall not be considered to have
8 been introduced into the manufacturing, processing, refining,
9 fabricating, or recycling process.

10 (5) "Processing" means the physical application of the materials
11 and labor necessary to modify or change the characteristics of
12 tangible personal property.

13 (6) "Qualified person" means either of the following:

14 (A) A person who is engaged in those lines of business described
15 in Codes 3111 to 3399, inclusive, or 5112 of the North American
16 Industry Classification System (NAICS) published by the United
17 States Office of Management and Budget (OMB), 2012 edition.

18 (B) An affiliate of a person who is a qualified person pursuant
19 to subparagraph (A) if the affiliate is included as a member of that
20 person's unitary group for which a combined report is required to
21 be filed under Article 1 (commencing with Section 25101) of
22 Chapter 17 of Part 11.

23 (7) (A) "Qualified tangible personal property" includes, but is
24 not limited to, all of the following:

25 (i) Machinery and equipment, including component parts and
26 contrivances such as belts, shafts, moving parts, and operating
27 structures.

28 (ii) Equipment or devices used or required to operate, control,
29 regulate, or maintain the machinery, including, but not limited to,
30 computers, data-processing equipment, and computer software,
31 together with all repair and replacement parts with a useful life of
32 one or more years therefor, whether purchased separately or in
33 conjunction with a complete machine and regardless of whether
34 the machine or component parts are assembled by the qualified
35 person or another party.

36 (iii) Tangible personal property used in pollution control that
37 meets standards established by this state or any local or regional
38 governmental agency within this state.

39 (iv) Special purpose buildings and foundations used as an
40 integral part of the manufacturing, processing, refining, fabricating,

1 or recycling process, or that constitute a research or storage facility
2 used during those processes. Buildings used solely for warehousing
3 purposes after completion of those processes are not included.

4 ~~(v) Fuels used or consumed in the manufacturing, processing,~~
5 ~~refining, fabricating, or recycling process.~~

6 (B) “Qualified tangible personal property” shall not include any
7 of the following:

8 (i) Consumables with a useful life of less than one year, ~~except~~
9 ~~as provided in clause (v) of subparagraph (A).~~ year.

10 (ii) Furniture, inventory, and equipment used in the extraction
11 process, or equipment used to store finished products that have
12 completed the manufacturing, processing, refining, fabricating, or
13 recycling process.

14 (iii) Tangible personal property used primarily in administration,
15 general management, or marketing.

16 (8) “Research and development” means those activities that are
17 described in Section 174 of the Internal Revenue Code or in any
18 regulations thereunder.

19 (9) “Refining” means the process of converting a natural
20 resource to an intermediate or finished product.

21 (10) ~~“Useful life” for tangible personal property that is treated~~
22 ~~as having a useful life of one or more years for state income or~~
23 ~~franchise tax purposes shall be deemed to have a useful life of one~~
24 ~~or more years for purposes of this section. “Useful life” for tangible~~
25 ~~personal property that is treated as having a useful life of less than~~
26 ~~one year for state income or franchise tax purposes shall be deemed~~
27 ~~to have a useful life of less than one year for purposes of this~~
28 ~~section~~ *has the same meaning as provided for in Part 10*
29 *(commencing with Section 17001), or Part 11 (commencing with*
30 *Section 23001), as applicable.*

31 (c) An exemption shall not be allowed under this section unless
32 the purchaser furnishes the retailer with an exemption certificate,
33 completed in accordance with any instructions or regulations as
34 the board may prescribe, and the retailer retains the exemption
35 certificate in its records and furnishes it to the board upon request.
36 The exemption certificate shall contain the sales price of the
37 qualified tangible personal property that the sale of, or the storage,
38 use, or other consumption of, is exempt pursuant to subdivision
39 (a).

(d) Notwithstanding the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(e) (1) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or storage, use, or other consumption of property that, within one year from the date of purchase, is removed from California, converted from an exempt use under subdivision (a) to some other use not qualifying for exemption, or used in a manner not qualifying for exemption.

(2) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser removes that property outside California, converts that property for use in a manner not qualifying for the exemption, or uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

SEC. 2. Section 17053.91 is added to the Revenue and Taxation Code, to read:

17053.91. (a) There shall be allowed to a qualified person as a credit against the “net tax” as defined in Section 17039, an amount equal to that portion of sales tax reimbursement paid to a retailer or use tax paid on a purchase of tangible personal property that is placed in service in this state, equal to 6.5 percent of the gross receipts or sales price on transactions described in paragraphs (1) to (4), inclusive, occurring on and after January 1, 2014, and before January 1, 2017, that are subject to tax under Part 1 (commencing with Section 6001) of Division 2.

(1) Qualified tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by

1 the qualified person and introduced into the process and ending at
2 the point at which the manufacturing, processing, refining,
3 fabricating, or recycling has altered property to its completed form,
4 including packaging, if required.

5 (2) Qualified tangible personal property purchased for use by
6 a qualified person to be used primarily in research and
7 development.

8 (3) Qualified tangible personal property purchased for use by
9 a qualified person to be used primarily to maintain, repair, measure,
10 or test any qualified tangible personal property described in
11 paragraph (1) or (2).

12 (4) Qualified tangible personal property purchased for use by
13 a contractor purchasing that property for use in the performance
14 of a construction contract for the qualified person, who will use
15 that property as an integral part of the manufacturing, processing,
16 refining, fabricating, or recycling process, or as a research or
17 storage facility for use in connection with those processes.

18 (b) The amount of any credit allowed under subdivision (a) shall
19 be applied in equal amounts over three successive taxable years
20 beginning with the first taxable year beginning on or after January
21 1, 2017.

22 (c) For purposes of this section:

23 (1) “Fabricating” means to make, build, create, produce, or
24 assemble components or property to work in a new or different
25 manner.

26 (2) “Manufacturing” means the activity of converting or
27 conditioning tangible personal property by changing the form,
28 composition, quality, or character of the property for ultimate sale
29 at retail or use in the manufacturing of a product to be ultimately
30 sold at retail. Manufacturing includes any improvements to tangible
31 personal property that result in a greater service life or greater
32 functionality than that of the original property.

33 (3) “Primarily” means 50 percent or more of the time.

34 (4) “Process” means the period beginning at the point at which
35 any raw materials are received by the qualified person and
36 introduced into the manufacturing, processing, refining, fabricating,
37 or recycling activity of the qualified person and ending at the point
38 at which the manufacturing, processing, refining, fabricating, or
39 recycling activity of the qualified person has altered tangible
40 personal property to its completed form, including packaging, if

1 required. Raw materials shall be considered to have been
2 introduced into the process when the raw materials are stored on
3 the same premises where the qualified person's manufacturing,
4 processing, refining, fabricating, or recycling activity is conducted.
5 Raw materials that are stored on premises other than where the
6 qualified person's manufacturing, processing, refining, fabricating,
7 or recycling activity is conducted, shall not be considered to have
8 been introduced into the manufacturing, processing, refining,
9 fabricating, or recycling process.

10 (5) "Processing" means the physical application of the materials
11 and labor necessary to modify or change the characteristics of
12 tangible personal property.

13 (6) "Qualified person" means either of the following:

14 (A) A person who is engaged in those lines of business described
15 in Codes 3111 to 3399, inclusive, or 5112 of the North American
16 Industry Classification System (NAICS) published by the United
17 States Office of Management and Budget (OMB), 2012 edition.

18 (B) An affiliate of a person who is a qualified person pursuant
19 to subparagraph (A) if the affiliate is included as a member of that
20 person's unitary group for which a combined report is required to
21 be filed under Article 1 (commencing with Section 25101) of
22 Chapter 17 of Part 11.

23 (7) (A) "Qualified tangible personal property" includes, but is
24 not limited to, all of the following:

25 (i) Machinery and equipment, including component parts and
26 contrivances such as belts, shafts, moving parts, and operating
27 structures.

28 (ii) Equipment or devices used or required to operate, control,
29 regulate, or maintain the machinery, including, but not limited to,
30 computers, data-processing equipment, and computer software,
31 together with all repair and replacement parts with a useful life of
32 one or more years therefor, whether purchased separately or in
33 conjunction with a complete machine and regardless of whether
34 the machine or component parts are assembled by the qualified
35 person or another party.

36 (iii) Tangible personal property used in pollution control that
37 meets standards established by this state or any local or regional
38 governmental agency within this state.

39 (iv) Special purpose buildings and foundations used as an
40 integral part of the manufacturing, processing, refining, fabricating,

1 or recycling process, or that constitute a research or storage facility
2 used during those processes. Buildings used solely for warehousing
3 purposes after completion of those processes are not included.

4 (v) Fuels used or consumed in the manufacturing, processing,
5 refining, fabricating, or recycling process.

6 (B) “Qualified tangible personal property” shall not include any
7 of the following:

8 (i) Consumables with a useful life of less than one year, except
9 as provided in clause (v) of subparagraph (A).

10 (ii) Furniture, inventory, and equipment used in the extraction
11 process, or equipment used to store finished products that have
12 completed the manufacturing, processing, refining, fabricating, or
13 recycling process.

14 (iii) Tangible personal property used primarily in administration,
15 general management, or marketing.

16 (iv) Tangible personal property that, within one year from the
17 date of purchase, is either removed from California, converted
18 from a use described in subdivision (a) to some other use not
19 described in subdivision (a), or used in a manner not described in
20 subdivision (a).

21 (8) “Research and development” means those activities that are
22 described in Section 174 of the Internal Revenue Code or in any
23 regulations thereunder.

24 (9) “Refining” means the process of converting a natural
25 resource to an intermediate or finished product.

26 (10) “Useful life” for tangible personal property that is treated
27 as having a useful life of one or more years for state income or
28 franchise tax purposes shall be deemed to have a useful life of one
29 or more years for purposes of this section. “Useful life” for tangible
30 personal property that is treated as having a useful life of less than
31 one year for state income or franchise tax purposes shall be deemed
32 to have a useful life of less than one year for purposes of this
33 section.

34 (d) In the case where the credit otherwise allowed under this
35 section exceeds the “net tax” for the taxable year, that portion of
36 the credit that exceeds the “net tax” may be carried over to reduce
37 the net tax in the following taxable year, and the succeeding four
38 taxable years if necessary, until the credit is exhausted.

39 (e) This section shall remain in effect only until December 1,
40 2020, and as of that date is repealed.

SEC. 3. Section 23649.1 is added to the Revenue and Taxation Code, to read:

23649.1. (a) There shall be allowed to a qualified person as a credit against the “tax” as defined in Section 23036, an amount equal to that portion of sales tax reimbursement paid to a retailer or use tax paid on a purchase of tangible personal property that is placed in service in this state, equal to 6.5 percent of the gross receipts or sales price on transactions described in paragraphs (1) to (4), inclusive, occurring on and after January 1, 2014, and before January 1, 2017, that are subject to tax under Part 1 (commencing with Section 6001) of Division 2.

(1) Qualified tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(2) Qualified tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(3) Qualified tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any qualified tangible personal property described in paragraph (1) or (2).

(4) Qualified tangible personal property purchased for use by a contractor purchasing that property for use in the performance of a construction contract for the qualified person, who will use that property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with those processes.

(b) The amount of any credit allowed under subdivision (a) shall be applied in equal amounts over three successive taxable years beginning with the first taxable year beginning on or after January 1, 2017.

(c) For purposes of this section:

(1) “Fabricating” means to make, build, create, produce, or assemble components or property to work in a new or different manner.

1 (2) “Manufacturing” means the activity of converting or
2 conditioning tangible personal property by changing the form,
3 composition, quality, or character of the property for ultimate sale
4 at retail or use in the manufacturing of a product to be ultimately
5 sold at retail. Manufacturing includes any improvements to tangible
6 personal property that result in a greater service life or greater
7 functionality than that of the original property.

8 (3) “Primarily” means 50 percent or more of the time.

9 (4) “Process” means the period beginning at the point at which
10 any raw materials are received by the qualified person and
11 introduced into the manufacturing, processing, refining, fabricating,
12 or recycling activity of the qualified person and ending at the point
13 at which the manufacturing, processing, refining, fabricating, or
14 recycling activity of the qualified person has altered tangible
15 personal property to its completed form, including packaging, if
16 required. Raw materials shall be considered to have been
17 introduced into the process when the raw materials are stored on
18 the same premises where the qualified person’s manufacturing,
19 processing, refining, fabricating, or recycling activity is conducted.
20 Raw materials that are stored on premises other than where the
21 qualified person’s manufacturing, processing, refining, fabricating,
22 or recycling activity is conducted, shall not be considered to have
23 been introduced into the manufacturing, processing, refining,
24 fabricating, or recycling process.

25 (5) “Processing” means the physical application of the materials
26 and labor necessary to modify or change the characteristics of
27 tangible personal property.

28 (6) “Qualified person” means either of the following:

29 (A) A person who is engaged in those lines of business described
30 in Codes 3111 to 3399, inclusive, or 5112 of the North American
31 Industry Classification System (NAICS) published by the United
32 States Office of Management and Budget (OMB), 2012 edition.

33 (B) An affiliate of a person who is a qualified person pursuant
34 to subparagraph (A) if the affiliate is included as a member of that
35 person’s unitary group for which a combined report is required to
36 be filed under Article 1 (commencing with Section 25101) of
37 Chapter 17 of Part 11.

38 (7) (A) “Qualified tangible personal property” includes, but is
39 not limited to, all of the following:

1 (i) Machinery and equipment, including component parts and
2 contrivances such as belts, shafts, moving parts, and operating
3 structures.

4 (ii) Equipment or devices used or required to operate, control,
5 regulate, or maintain the machinery, including, but not limited to,
6 computers, data-processing equipment, and computer software,
7 together with all repair and replacement parts with a useful life of
8 one or more years therefor, whether purchased separately or in
9 conjunction with a complete machine and regardless of whether
10 the machine or component parts are assembled by the qualified
11 person or another party.

12 (iii) Tangible personal property used in pollution control that
13 meets standards established by this state or any local or regional
14 governmental agency within this state.

15 (iv) Special purpose buildings and foundations used as an
16 integral part of the manufacturing, processing, refining, fabricating,
17 or recycling process, or that constitute a research or storage facility
18 used during those processes. Buildings used solely for warehousing
19 purposes after completion of those processes are not included.

20 (v) Fuels used or consumed in the manufacturing, processing,
21 refining, fabricating, or recycling process.

22 (B) “Qualified tangible personal property” shall not include any
23 of the following:

24 (i) Consumables with a useful life of less than one year, except
25 as provided in clause (v) of subparagraph (A).

26 (ii) Furniture, inventory, and equipment used in the extraction
27 process, or equipment used to store finished products that have
28 completed the manufacturing, processing, refining, fabricating, or
29 recycling process.

30 (iii) Tangible personal property used primarily in administration,
31 general management, or marketing.

32 (iv) Tangible personal property that, within one year from the
33 date of purchase, is either removed from California, converted
34 from a use described in subdivision (a) to some other use not
35 described in subdivision (a), or used in a manner not described in
36 subdivision (a).

37 (8) “Research and development” means those activities that are
38 described in Section 174 of the Internal Revenue Code or in any
39 regulations thereunder.

1 (9) “Refining” means the process of converting a natural
2 resource to an intermediate or finished product.

3 (10) “Useful life” for tangible personal property that is treated
4 as having a useful life of one or more years for state income or
5 franchise tax purposes shall be deemed to have a useful life of one
6 or more years for purposes of this section. “Useful life” for tangible
7 personal property that is treated as having a useful life of less than
8 one year for state income or franchise tax purposes shall be deemed
9 to have a useful life of less than one year for purposes of this
10 section.

11 (d) In the case where the credit otherwise allowed under this
12 section exceeds the “net tax” for the taxable year, that portion of
13 the credit that exceeds the “net tax” may be carried over to reduce
14 the net tax in the following taxable year, and the succeeding four
15 taxable years if necessary, until the credit is exhausted.

16 (e) This section shall remain in effect only until December 1,
17 2020, and as of that date is repealed.

18 SEC. 4. This act provides for a tax levy within the meaning
19 of Article IV of the Constitution and shall go into immediate effect.